

a construction contract concerning ~~[that is principally for the construction or repair of an improvement to]~~ real property located in this state.

(b) If a construction contract or an agreement collateral to or affecting the construction contract contains a provision making the contract or agreement or any conflict arising under the contract or agreement subject to another state's law, litigation in the courts of another state, or arbitration in another state, that provision is voidable by a ~~[the]~~ party obligated by the contract or agreement to perform the work that is the subject of the construction contract ~~[or repair]~~.

Sec. 272.002. ~~INAPPLICABILITY OF CHAPTER [CONTRACT PRINCIPALLY FOR CONSTRUCTION OR REPAIR OF REAL PROPERTY IMPROVEMENTS]. This chapter does not apply to a construction~~ ~~[(a) For purposes of this chapter, a contract is principally for the construction or repair of an improvement to real property located in this state if the contract obligates a party, as the party's principal obligation under the contract, to provide labor or labor and materials as a general contractor or subcontractor for the construction or repair of an improvement to real property located in this state.]~~

~~[(b) For purposes of this chapter, a contract is not principally for the construction or repair of an improvement to real property located in this state if the] contract that:~~

- (1) is a partnership agreement or other agreement governing an entity or trust;
- (2) provides for a loan or other extension of credit and the party promising to perform the work that is the subject of the construction contract ~~[construct or repair the improvement]~~ is doing so as part of the party's agreements with the lender or other person who extends credit; or
- (3) is for the management of real property or improvements and the obligation to perform the work that is the subject of the construction contract ~~[construct or repair the improvement]~~ is part of that management.

~~[(c) Subsections (a) and (b) do not provide an exclusive list of the situations in which a contract is or is not principally for the construction or repair of an improvement to real property located in this state.]~~

SECTION 3. The changes in law made by this Act apply only to a contract, or an agreement collateral to or affecting a contract, entered into on or after the effective date of this Act. A contract, or an agreement collateral to or affecting a contract, entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2017.

Passed the Senate on May 4, 2017: Yeas 29, Nays 2; the Senate concurred in House amendment on May 27, 2017: Yeas 29, Nays 2; passed the House, with amendment, on May 24, 2017: Yeas 135, Nays 8, two present not voting.

Approved June 9, 2017.

Effective September 1, 2017.

PURCHASE AND USE OF OPEN EDUCATIONAL RESOURCES

CHAPTER 581

S.B. No. 810

AN ACT

relating to the purchase and use of open educational resources.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 31.001, Education Code, is amended to read as follows:

Sec. 31.001. FREE INSTRUCTIONAL MATERIALS. Instructional materials selected

for use in the public schools shall be furnished without cost to the students attending those schools. Except as provided by Section 31.104(d), a school district may not charge a student for instructional material or technological equipment purchased by the district with the district's instructional materials and technology allotment.

SECTION 2. Sections 31.002(1) and (1-a), Education Code, are amended to read as follows:

(1) "Instructional material" means content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including *open education resource* [open-source] instructional material.

(1-a) "*Open education resource* [Open-source] instructional material" means *teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that allows for free use, reuse, modification, and sharing with others, including full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge* [electronic instructional material that is available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the instructional material]. The term includes state-developed *open education resource* [open-source] instructional material purchased under Subchapter B-1.

SECTION 3. Section 31.004(b), Education Code, is amended to read as follows:

(b) To determine whether each student has instructional materials that cover all elements of the essential knowledge and skills as required by Subsection (a), a school district or open-enrollment charter school may consider:

- (1) instructional materials adopted by the State Board of Education;
- (2) materials adopted or purchased by the commissioner under Section 31.0231 or Subchapter B-1;
- (3) *open education resource* [open-source] instructional materials submitted by eligible institutions and adopted by the State Board of Education under Section 31.0241;
- (4) *open education resource* [open-source] instructional materials made available by other public schools; ~~and~~
- (5) instructional materials developed or purchased by the school district or open-enrollment charter school; *and*
- (6) *open education resource instructional materials and other electronic instructional materials included in the repository under Section 31.083.*

SECTION 4. Sections 31.005 and 31.021, Education Code, are amended to read as follows:

Sec. 31.005. FUNDING FOR OPEN-ENROLLMENT CHARTER SCHOOLS. An open-enrollment charter school is entitled to the instructional materials and technology allotment under this chapter and is subject to this chapter as if the school were a school district.

Sec. 31.021. STATE INSTRUCTIONAL MATERIALS AND TECHNOLOGY FUND.

(a) The state instructional materials and technology fund consists of:

- (1) an amount set aside by the State Board of Education from the available school fund, in accordance with Section 43.001(d); and
- (2) all amounts lawfully paid into the fund from any other source.

(c) Money in the state instructional materials and technology fund shall be used to:

- (1) fund the instructional materials *and technology* allotment, as provided by Section 31.0211;
- (2) purchase special instructional materials for the education of blind and visually impaired students in public schools;
- (3) pay the expenses associated with the instructional materials adoption and review process under this chapter;
- (4) pay the expenses associated with the purchase or licensing of *open education resource* ~~[open-source]~~ instructional material;
- (5) pay the expenses associated with the purchase of instructional material, including intrastate freight and shipping and the insurance expenses associated with intrastate freight and shipping;
- (6) ~~[fund the technology lending grant program established under Section 32.201; and~~
- ~~[(7)]~~ provide funding to the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, and the Texas Juvenile Justice Department; *and*
- (7) *pay the expenses associated with the instructional materials web portal developed under Section 31.081.*

(d) Money transferred to the state instructional materials *and technology* fund remains in the fund until spent and does not lapse to the state at the end of the fiscal year.

SECTION 5. The heading to Section 31.0211, Education Code, is amended to read as follows:

Sec. 31.0211. INSTRUCTIONAL MATERIALS AND TECHNOLOGY ALLOTMENT.

SECTION 6. Sections 31.0211(a), (b), and (c), Education Code, are amended to read as follows:

(a) A school district is entitled to an allotment each biennium from the state instructional materials *and technology* fund for each student enrolled in the district on a date during the last year of the preceding biennium specified by the commissioner. The commissioner shall determine the amount of the allotment per student each biennium on the basis of the amount of money available in the state instructional materials *and technology* fund to fund the allotment. An allotment under this section shall be transferred from the state instructional materials *and technology* fund to the credit of the district's instructional materials *and technology* account as provided by Section 31.0212.

(b) A juvenile justice alternative education program under Section 37.011 is entitled to an allotment from the state instructional materials *and technology* fund in an amount determined by the commissioner. The program shall use the allotment to purchase items listed in Subsection (c) for students enrolled in the program. The commissioner's determination under this subsection is final and may not be appealed.

(c) Subject to Subsection (d), funds allotted under this section may be used to:

(1) purchase:

(A) materials on the list adopted by the commissioner, as provided by Section 31.0231;

(B) instructional materials, regardless of whether the instructional materials are on the list adopted under Section 31.024;

(C) consumable instructional materials, including workbooks;

(D) instructional materials for use in bilingual education classes, as provided by Section 31.029;

(E) instructional materials for use in college preparatory courses under Section 28.014, as provided by Section 31.031;

(F) supplemental instructional materials, as provided by Section 31.035;

(G) state-developed *open education resource* [~~open-source~~] instructional materials, as provided by Subchapter B-1;

(H) instructional materials and technological equipment under any continuing contracts of the district in effect on September 1, 2011; and

(I) technological equipment necessary to support the use of materials included on the list adopted by the commissioner under Section 31.0231 or any instructional materials purchased with an allotment under this section; and

(2) pay:

(A) for training educational personnel directly involved in student learning in the appropriate use of instructional materials and for providing for access to technological equipment for instructional use; and

(B) the salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning.

SECTION 7. The heading to Section 31.0212, Education Code, is amended to read as follows:

Sec. 31.0212. INSTRUCTIONAL MATERIALS AND TECHNOLOGY ACCOUNT.

SECTION 8. Sections 31.0212(a), (b), (d), and (e), Education Code, are amended to read as follows:

(a) The commissioner shall maintain an instructional materials *and technology* account for each school district. In the first year of each biennium, the commissioner shall deposit in the account for each district the amount of the district's instructional materials *and technology* allotment under Section 31.0211.

(b) The commissioner shall pay the cost of instructional materials requisitioned by a school district under Section 31.103 using funds from the district's instructional materials *and technology* account.

(d) Money deposited in a school district's instructional materials *and technology* account during each state fiscal biennium remains in the account and available for use by the district for the entire biennium. At the end of each biennium, a district with unused money in the district's account may carry forward any remaining balance to the next biennium.

(e) The commissioner shall adopt rules as necessary to implement this section. The rules must include a requirement that a school district provide the title and publication information for any instructional materials requisitioned or purchased by the district with the district's instructional materials *and technology* allotment.

SECTION 9. Section 31.0213, Education Code, is amended to read as follows:

Sec. 31.0213. CERTIFICATION OF USE OF INSTRUCTIONAL MATERIALS AND TECHNOLOGY ALLOTMENT. Each school district shall annually certify to the commissioner that the district's instructional materials *and technology* allotment has been used only for expenses allowed by Section 31.0211.

SECTION 10. Section 31.0214(a), Education Code, is amended to read as follows:

(a) Each year the commissioner shall adjust the instructional materials *and technology* allotment of school districts experiencing high enrollment growth. The commissioner shall establish a procedure for determining high enrollment growth districts eligible to receive an adjustment under this section and the amount of the instructional materials *and technology* allotment those districts will receive.

SECTION 11. The heading to Section 31.0215, Education Code, is amended to read as follows:

Sec. 31.0215. INSTRUCTIONAL MATERIALS AND TECHNOLOGY [~~MATERIAL~~] ALLOTMENT PURCHASES.

SECTION 12. Sections 31.0215(b) and (c), Education Code, are amended to read as follows:

(b) The commissioner may allow a school district or open-enrollment charter school to place an order for instructional materials before the beginning of a fiscal biennium and to receive instructional materials before payment. The commissioner shall limit the cost of an order placed under this section to 80 percent of the estimated amount to which a school district or open-enrollment charter school is estimated to be entitled as provided by Subsection (a) and shall first credit any balance in a district or charter school instructional materials *and technology* account to pay for an order placed under this section.

(c) The commissioner shall make payments for orders placed under this section as funds become available to the instructional materials *and technology* fund and shall prioritize payment of orders placed under this section over reimbursement of purchases made directly by a school district or open-enrollment charter school.

SECTION 13. Section 31.022, Education Code, is amended by amending Subsection (d) and adding Subsections (g) and (h) to read as follows:

(d) At least 12 months before the beginning of the school year for which instructional materials for a particular subject and grade level will be adopted under the review and adoption cycle, the board shall publish notice of the review and adoption cycle for those instructional materials. A request for production must allow submission of *open education resource* ~~[open-source]~~ instructional materials that are available for use by the state without charge on the same basis as instructional materials offered for sale.

(g) *In reviewing and adopting instructional materials, the board shall consider a school district's need for technology as well as instructional materials and in any biennium may limit the adoption of instructional materials to provide sufficient resources to purchase technology resources, including digital curriculum.*

(h) *The board shall include information regarding open education resource instructional materials during the adoption cycle, including any cost savings associated with the adoption of open education resource instructional materials.*

SECTION 14. Section 31.0231(b), Education Code, is amended to read as follows:

(b) A school district may select material on the list adopted under Subsection (a) to be funded by the district's instructional materials *and technology* allotment under Section 31.0211.

SECTION 15. The heading to Section 31.0241, Education Code, is amended to read as follows:

Sec. 31.0241. *ADOPTION OF OPEN EDUCATION RESOURCE* ~~[OPEN-SOURCE]~~ INSTRUCTIONAL MATERIALS.

SECTION 16. Section 31.0241(b), Education Code, is amended to read as follows:

(b) The State Board of Education shall place *open education resource* ~~[open-source]~~ instructional material for a secondary-level course submitted for adoption by an eligible institution on the list adopted under Section 31.023 if:

- (1) the instructional material is written, compiled, or edited primarily by faculty of the eligible institution who specialize in the subject area of the instructional material;
- (2) the eligible institution identifies each contributing author;
- (3) the appropriate department of the eligible institution certifies the instructional material for accuracy; and
- (4) the eligible institution determines that the instructional material qualifies for placement on the list based on the extent to which the instructional material covers the essential knowledge and skills identified under Section 28.002 for the subject for which the instructional material is written and certifies that:

(A) for instructional material for a senior-level course, a student who successfully completes a course based on the instructional material will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or

(B) for instructional material for a junior-level and senior-level course, a student

who successfully completes the junior-level course based on the instructional material will be prepared for entry into the senior-level course.

SECTION 17. Section 31.0242, Education Code, is amended to read as follows:

Sec. 31.0242. REVIEW OF *OPEN EDUCATION RESOURCE* ~~[OPEN-SOURCE]~~ INSTRUCTIONAL MATERIAL. Not later than the 90th day after the date *open education resource* ~~[open-source]~~ instructional material is submitted as provided by Section 31.0241, the State Board of Education may review the instructional material. The board shall:

(1) post with the list adopted under Section 31.023 comments made by the board regarding the *open education resource* ~~[open-source]~~ instructional material placed on the list; and

(2) distribute board comments to school districts.

SECTION 18. Section 31.026(d), Education Code, is amended to read as follows:

(d) This section does not apply to *open education resource* ~~[open-source]~~ instructional material.

SECTION 19. Section 31.0261, Education Code, is amended to read as follows:

Sec. 31.0261. CONTRACTS FOR PRINTING OF *OPEN EDUCATION RESOURCE* ~~[OPEN-SOURCE]~~ INSTRUCTIONAL MATERIALS. The State Board of Education may execute a contract for the printing of *open education resource* ~~[open-source]~~ instructional materials placed on the list adopted under Section 31.023. The contract must allow a school district to requisition printed copies of *open education resource* ~~[open-source]~~ instructional materials as provided by Section 31.103.

SECTION 20. Section 31.027(c), Education Code, is amended to read as follows:

(c) This section does not apply to *open education resource* ~~[open-source]~~ instructional material.

SECTION 21. Section 31.029(a), Education Code, is amended to read as follows:

(a) A school district shall purchase with the district's instructional materials *and technology* allotment or otherwise acquire instructional materials for use in bilingual education classes.

SECTION 22. Section 31.031(a), Education Code, is amended to read as follows:

(a) A school district may purchase with the district's instructional materials *and technology* allotment or otherwise acquire instructional materials for use in college preparatory courses under Section 28.014.

SECTION 23. The heading to Subchapter B-1, Chapter 31, Education Code, is amended to read as follows:

SUBCHAPTER B-1. STATE-DEVELOPED *OPEN EDUCATION RESOURCE*
~~[OPEN-SOURCE]~~ INSTRUCTIONAL MATERIALS

SECTION 24. Sections 31.071, 31.072, 31.073, 31.074, and 31.075, Education Code, are amended to read as follows:

Sec. 31.071. PURCHASE AUTHORITY. (a) The commissioner may purchase state-developed *open education resource* ~~[open-source]~~ instructional materials in accordance with this subchapter.

(b) The commissioner:

(1) shall purchase any state-developed *open education resource* ~~[open-source]~~ instructional materials through a competitive process; and

(2) may purchase more than one state-developed *open education resource* ~~[open-source]~~ instructional material for a subject or grade level.

(c) State-developed *open education resource* ~~[open-source]~~ instructional material must be irrevocably owned by or licensed to the state for use in the applicable subject or grade level. The state must have unlimited authority to modify, delete, combine, or add content to the instructional material after purchase.

(d) The commissioner may issue a request for proposals for state-developed *open education resource* ~~[open-source]~~ instructional material:

(1) in accordance with the instructional material review and adoption cycle under Section 31.022; or

(2) at any other time the commissioner determines that a need exists for additional instructional material options.

(e) The costs of administering this subchapter and purchasing state-developed *open education resource* ~~[open-source]~~ instructional materials shall be paid from the state instructional materials and technology fund, as determined by the commissioner.

Sec. 31.072. CONTENT REQUIREMENTS. (a) State-developed *open education resource* ~~[open-source]~~ instructional material must:

(1) be evaluated by teachers or other experts, as determined by the commissioner, before purchase; and

(2) meet the requirements for inclusion on the instructional material list adopted under Section 31.023.

(b) Following a curriculum revision by the State Board of Education, the commissioner shall require the revision of state-developed *open education resource* ~~[open-source]~~ instructional material relating to that curriculum. The commissioner may, at any time, require an additional revision of state-developed *open education resource* ~~[open-source]~~ instructional material or contract for ongoing revisions of state-developed *open education resource* ~~[open-source]~~ instructional material for a period not to exceed the period under Section 31.022 for which instructional material for that subject and grade level may be adopted. The commissioner shall use a competitive process to request proposals to revise state-developed *open education resource* ~~[open-source]~~ instructional material under this subsection.

Sec. 31.073. SELECTION BY SCHOOL DISTRICT. (c) Notwithstanding Section 31.022, a school district or open-enrollment charter school may adopt state-developed *open education resource* ~~[open-source]~~ instructional material at any time, regardless of the instructional material review and adoption cycle under that section.

(d) A school district or open-enrollment charter school may not be charged for selection of state-developed *open education resource* ~~[open-source]~~ instructional material in addition to instructional material adopted under Subchapter B.

Sec. 31.074. DISTRIBUTION. (a) The commissioner shall provide for the distribution of state-developed *open education resource* ~~[open-source]~~ instructional materials in a manner consistent with distribution of instructional materials adopted under Subchapter B.

(b) The commissioner may use a competitive process to contract for printing or other reproduction of state-developed *open education resource* ~~[open-source]~~ instructional material on behalf of a school district or open-enrollment charter school. The commissioner may not require a school district or open-enrollment charter school to contract with a state-approved provider for the printing or reproduction of state-developed *open education resource* ~~[open-source]~~ instructional material.

Sec. 31.075. OWNERSHIP; LICENSING. (a) State-developed *open education resource* ~~[open-source]~~ instructional material is the property of the state.

(b) The commissioner shall provide a license to each public school in the state, including a school district, an open-enrollment charter school, and a state or local agency educating students in any grade from prekindergarten through high school, to use and reproduce state-developed *open education resource* ~~[open-source]~~ instructional material.

(c) The commissioner may provide a license to use state-developed *open education resource* ~~[open-source]~~ instructional material to an entity not listed in Subsection (b). In determining the cost of a license under this subsection, the commissioner shall seek, to the extent feasible, to recover the costs of developing, revising, and distributing state-developed *open education resource* ~~[open-source]~~ instructional materials.

SECTION 25. Section 31.076(b), Education Code, is amended to read as follows:

(b) A decision by the commissioner regarding the purchase, revision, cost, or distribution of state-developed *open education resource* ~~[open-source]~~ instructional material is final and may not be appealed.

SECTION 26. Section 31.077, Education Code, is amended to read as follows:

Sec. 31.077. **ADOPTION SCHEDULE.** The commissioner shall develop a schedule for the adoption of state-developed *open education resource* ~~[open-source]~~ instructional materials under this subchapter. In developing the adoption schedule under this section, the commissioner shall consider:

- (1) the availability of funds;
- (2) the existing instructional material adoption cycles under Subchapter B; and
- (3) the availability of instructional materials for development or purchase by the state.

SECTION 27. Chapter 31, Education Code, is amended by adding Subchapter B-2 to read as follows:

SUBCHAPTER B-2. INSTRUCTIONAL MATERIALS WEB PORTAL

Sec. 31.081. **INSTRUCTIONAL MATERIALS WEB PORTAL.** (a) *The commissioner shall develop and maintain a web portal to assist school districts and open-enrollment charter schools in selecting instructional materials under Section 31.101.*

(b) *The web portal must include general information such as price, computer system requirements, and any other relevant specifications for each instructional material:*

- (1) *on the instructional materials list, including the list adopted under Section 31.0231; or*
- (2) *submitted by a publisher for inclusion in the web portal.*

(c) *The commissioner by rule shall establish the procedure by which a publisher may submit instructional materials for inclusion in the web portal.*

(d) *The commissioner shall use a competitive process to contract for the development of the web portal.*

(e) *The commissioner shall use money in the state instructional materials and technology fund to pay any expenses associated with the web portal.*

Sec. 31.082. **QUALITY OF INSTRUCTIONAL MATERIALS SUBMITTED BY PUBLISHER.** (a) *The commissioner shall contract with a private entity to conduct an independent analysis of each instructional material submitted by a publisher for inclusion in the web portal developed under Section 31.081. The analysis must:*

- (1) *evaluate the quality of the material; and*
- (2) *determine the extent to which the material covers the essential knowledge and skills identified under Section 28.002 for the subject and grade level for which the material is intended to be used, including an identification of:*
 - (A) *each of the essential knowledge and skills for the subject and grade level or levels covered by the material; and*
 - (B) *the percentage of the essential knowledge and skills for the subject and grade level or levels covered by the material.*

(b) *The commissioner shall include in the web portal developed under Section 31.081 the results of each analysis conducted under Subsection (a).*

Sec. 31.083. **INSTRUCTIONAL MATERIALS REPOSITORY.** (a) *The commissioner shall include in the web portal developed under Section 31.081 a repository of open education resource instructional materials and other electronic instructional materials that school districts and open-enrollment charter schools may access at no cost.*

(b) *A publisher may submit instructional materials for inclusion in the repository.*

Sec. 31.084. RULES. The commissioner may adopt rules as necessary to implement this subchapter.

SECTION 28. Section 31.101, Education Code, is amended by adding Subsection (b) and amending Subsection (f) to read as follows:

(b) *In selecting instructional material each year, a school district or open-enrollment charter school may consider the use of open education resource instructional materials.*

(f) The commissioner shall maintain an online requisition system for school districts to requisition instructional materials to be purchased with the district's instructional materials *and technology* allotment.

SECTION 29. Section 31.103(d), Education Code, is amended to read as follows:

(d) A school district or open-enrollment charter school that selects *open education resource* ~~[open-source]~~ instructional material shall requisition a sufficient number of printed copies for use by students unable to access the instructional material electronically unless the district or school provides to each student:

(1) electronic access to the instructional material at no cost to the student; or

(2) printed copies of the portion of the instructional material that will be used in the course.

SECTION 30. Sections 31.104(b), (g), and (h), Education Code, are amended to read as follows:

(b) A school district or open-enrollment charter school may order replacements for instructional materials that have been lost or damaged directly from the publisher of the instructional materials or any source for a printed copy of *open education resource* ~~[open-source]~~ instructional material.

(g) At the end of the school year for which *open education resource* ~~[open-source]~~ instructional material that a school district or open-enrollment charter school does not intend to use for another student is distributed, the printed copy of the *open education resource* ~~[open-source]~~ instructional material becomes the property of the student to whom it is distributed.

(h) This section does not apply to an electronic copy of *open education resource* ~~[open-source]~~ instructional material.

SECTION 31. Sections 31.151(d) and (e), Education Code, are amended to read as follows:

(d) A penalty collected under this section shall be deposited to the credit of the state instructional materials *and technology* fund.

(e) An eligible institution, as defined by Section 31.0241(a), that offers *open education resource* ~~[open-source]~~ instructional materials under Section 31.0241 is not a publisher or manufacturer for purposes of this section.

SECTION 32. Section 32.001(b), Education Code, is amended to read as follows:

(b) The State Board of Education shall update ~~[as necessary]~~ the plan developed under Subsection (a) *at least every five years*.

SECTION 33. Section 41.124(c), Education Code, is amended to read as follows:

(c) A school district that receives tuition for a student from a school district with a wealth per student that exceeds the equalized wealth level may not claim attendance for that student for purposes of Chapters 42 and 46 and the instructional materials *and technology* allotment under Section 31.0211.

SECTION 34. Section 43.001(d), Education Code, is amended to read as follows:

(d) Each biennium the State Board of Education shall set aside an amount equal to 50 percent of the distribution for that biennium from the permanent school fund to the available school fund as provided by Section 5(a), Article VII, Texas Constitution, to be placed, subject to the General Appropriations Act, in the state instructional materials *and technology* fund established under Section 31.021.

SECTION 35. Section 51.451, Education Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Open educational resource" means a teaching, learning, or research resource that is in the public domain or has been released under an intellectual property license that permits the free use, adaptation, and redistribution of the resource by any person. The term may include full course curricula, course materials, modules, textbooks, media, assessments, software, and any other tools, materials, or techniques, whether digital or otherwise, used to support access to knowledge.

SECTION 36. Section 51.452, Education Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Each institution of higher education shall:

(1) for each semester or academic term, compile a course schedule indicating each course offered by the institution for the semester or term to postsecondary students;

(2) with respect to each course, include with the schedule a list of the required and recommended textbooks that specifies, to the extent practicable, the following information for each textbook:

(A) the retail price;

(B) the author;

(C) the publisher;

(D) the most recent copyright date; **[and]**

(E) the International Standard Book Number assigned, if any; *and*

(F) *whether the textbook is an open educational resource;*

(3) except as provided by Subsection (b), at the time required by Subsection (c)(2):

(A) publish the textbook list with the course schedule on the institution's Internet website and with any course schedule the institution provides in hard copy format to the students of the institution; and

(B) make that information available to college bookstores and other bookstores that generally serve the students of the institution; and

(4) except as provided by Subsection (b), as soon as practicable after the information becomes available disseminate as required by Subdivision (3) specific information regarding any revisions to the institution's course schedule and textbook list.

(d) If an institution of higher education or a college bookstore publishes a textbook list with a course schedule on an Internet website that provides a search function, the institution or bookstore must:

(1) ensure that the search function permits a search based on whether a course or section of a course requires or recommends only open educational resources; or

(2) provide a searchable list of courses and sections of courses that require or recommend only open educational resources.

SECTION 37. Section 51.453, Education Code, is amended to read as follows:

Sec. 51.453. TEXTBOOK ASSISTANCE INFORMATION FOR STUDENTS. To the extent practicable, an institution of higher education shall make reasonable efforts to disseminate to its students information regarding:

(1) available institutional programs for renting textbooks or for purchasing used textbooks;

(2) available institutional guaranteed textbook buyback programs;

(3) available institutional programs for alternative delivery of textbook content; **[and]**

(4) the availability of courses and sections of courses that require or recommend only open educational resources; and

- (5) other available institutional textbook cost-savings strategies.

SECTION 38. Section 51.454(a), Education Code, is amended to read as follows:

(a) When a textbook publisher provides information regarding a textbook or supplemental material *other than an open educational resource* to a faculty member or other person in charge of selecting course materials at an institution of higher education, the publisher shall also provide to the faculty member or other person written information that includes:

(1) the price at which the publisher would make the textbook or supplemental material available to a college bookstore or other bookstore that generally serves the students of the institution and, if applicable, to the public;

(2) the copyright dates of the current and three preceding editions of the textbook;

(3) a description of any substantial content revisions made between the current edition of the textbook or supplemental material and the most recent preceding edition of the textbook or material, including the addition of new chapters, new material covering additional time periods, new themes, or new subject matter;

(4) information as to whether the textbook or supplemental material is available in other formats, such as a paperback or unbound version; and

(5) the price at which the publisher would make the textbook or supplemental material in any alternative format available to a bookstore described by Subdivision (1) and, if applicable, to the public.

SECTION 39. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0668 to read as follows:

Sec. 61.0668. OPEN EDUCATIONAL RESOURCES GRANT PROGRAM. (a) In this section, "open educational resource" has the meaning assigned by Section 51.451.

(b) The board shall establish and administer a grant program to encourage faculty at institutions of higher education to adopt, modify, redesign, or develop courses that use only open educational resources.

(c) Under the program, a faculty member of an institution of higher education may apply to the board for a grant to adopt, modify, redesign, or develop one or more courses at the institution to exclusively use open educational resources.

(d) For each course identified in an application for a grant under this section, the board shall select at least three persons qualified to review the curriculum of the course, as determined by the board, to evaluate the application with respect to that course. If the application is rejected, the reviewing persons must provide feedback on the application to the faculty member. The feedback may be provided anonymously.

(e) A faculty member who receives a grant under the program shall ensure that any open educational resource used in each applicable course is provided to a student enrolled in the course at no cost other than the cost of printing.

(f) A faculty member who receives a grant under the program must submit to the board for each of the four semesters immediately following the implementation of each applicable course a report that includes:

(1) the number of students who have completed the course;

(2) an estimate of the amount of money saved by a student due to the use of open educational resources in the course;

(3) a description of the open educational resources used in the course;

(4) the number of other faculty members, if any, who adopted the curriculum of the course; and

(5) any other information required by the board.

(g) A faculty member who receives a grant under the program may continue to submit a report described by Subsection (f) for a semester that occurs after the faculty member's duty to submit a report under that subsection has expired. The board may consider a fac-

ulty member's failure to submit additional reports under this subsection in evaluating a subsequent grant application submitted by the faculty member.

(h) A faculty member who is no longer employed by an institution of higher education forfeits any grant awarded under the program.

(i) The board may not award a grant under the program to a faculty member of a post-secondary educational institution other than an institution of higher education.

(j) Not later than December 1 of each even-numbered year, the board shall submit to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education a report on:

- (1) the total number of grants distributed under the program;
- (2) the number of students who completed a course adopted, modified, redesigned, or developed under the program;
- (3) an estimate of the total amount of money saved by students due to the use of open educational resources in courses adopted, modified, redesigned, or developed under the program;
- (4) a list of any subject areas that would benefit from the adoption, modification, or development of open educational resources; and
- (5) recommendations on future steps for adopting, modifying, or developing open educational resources.

(k) The board may solicit and accept gifts, grants, and donations from any public or private source for purposes of the program.

(l) The board shall adopt rules for the administration of the program.

(m) This section expires September 1, 2021.

(n) The board may not use appropriated funds in an amount greater than \$200,000 for purposes of the program in the state fiscal biennium ending August 31, 2019. The board may use any amount of other funds available for those purposes. This subsection expires December 1, 2019.

SECTION 40. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0669 to read as follows:

Sec. 61.0669. **FEASIBILITY STUDY ON STATE REPOSITORY OF OPEN EDUCATIONAL RESOURCES.** (a) In this section, "open educational resource" has the meaning assigned by Section 51.451.

(b) The board shall conduct a study to determine the feasibility of creating a state repository of open educational resources. The study must consider:

- (1) methods for facilitating public access to open educational resources;
- (2) the resources needed to create the repository; and
- (3) any potential challenges in creating the repository.

(c) In conducting the study, the board shall collaborate with relevant state agencies, textbook publishers, representatives of the open educational resource community, and other stakeholders, including the Texas Education Agency and representatives of public institutions of higher education and school districts.

(d) Not later than September 1, 2018, the board shall submit to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education a report on the results of the study and any recommendations for legislative or other action. The report must include information on:

- (1) methods by which open educational resources would be gathered and curated;
- (2) measures to ensure public access to the repository;
- (3) methods of encouraging the use of the repository;
- (4) management of intellectual property rights; and

(5) *any other measures necessary to ensure the repository's success.*

(e) *The board may not use appropriated funds in an amount greater than \$100,000 for purposes of the study. The board may use any amount of other available funds for purposes of the study and may solicit and accept gifts, grants, and donations for that purpose.*

(f) *This section expires September 1, 2019.*

SECTION 41. Section 403.093(d), Government Code, is amended to read as follows:

(d) The comptroller shall transfer from the general revenue fund to the foundation school fund an amount of money necessary to fund the foundation school program as provided by Chapter 42, Education Code. The comptroller shall make the transfers in installments as necessary to comply with Section 42.259, Education Code, and permit the Texas Education Agency, to the extent authorized by the General Appropriations Act, to make temporary transfers from the foundation school fund for payment of the instructional materials *and technology* allotment under Section 31.0211, Education Code. Unless an earlier date is necessary for purposes of temporary transfers for payment of the instructional materials *and technology* allotment, an installment must be made not earlier than two days before the date an installment to school districts is required by Section 42.259, Education Code, and must not exceed the amount necessary for that payment and any temporary transfers for payment of the instructional materials *and technology* allotment.

SECTION 42. Not later than September 1, 2018, the commissioner of education shall develop the web portal required under Subchapter B–2, Chapter 31, Education Code, as added by this Act.

SECTION 43. Sections 51.451, 51.452, 51.453, and 51.454, Education Code, as amended by this Act, apply beginning with the 2018 spring semester.

SECTION 44. (a) As soon as practicable after the effective date of this Act, the Texas Higher Education Coordinating Board shall adopt rules for the administration of the open educational resources grant program under Section 61.0668, Education Code, as added by this Act.

(b) Notwithstanding Section 61.0668(j), Education Code, as added by this Act, the Texas Higher Education Coordinating Board shall submit its initial report required under that section not later than December 1, 2019.

SECTION 45. In the event that S.B. 1784, 85th Legislature, Regular Session, 2017, is enacted and becomes law, any provisions repealed or language struck by that Act shall also be considered repealed or struck, as applicable, by this Act.

SECTION 46. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

Passed the Senate on April 25, 2017: Yeas 31, Nays 0; the Senate concurred in House amendments on May 27, 2017: Yeas 31, Nays 0; passed the House, with amendments, on May 24, 2017: Yeas 133, Nays 13, one present not voting.

Approved June 9, 2017.

Effective June 9, 2017.